

Before the
Federal Communications Commission
 Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 01-151
)	RM-10167
FM Broadcast Stations.)	
(Eminence, Missouri))	
)	
Reclassification of License of FM Station KJEL)	MM Docket No. 05-1715
(Lebanon, MO))	RM 10567

To: The Office of the Secretary
 Attn: Assistant Chief, Audio Division

**JOINT PETITION FOR APPROVAL OF SETTLEMENT
 AGREEMENT AND FOR OTHER RELIEF**

Four Him Enterprises, LLC ("Four Him") and Jeraldine Anderson ("Anderson") hereby submit this Joint Petition for Approval of Agreement and for Other Relief ("Joint Petition"). Four Him and Anderson request that the Commission take the following action:

- (1) Approve the Settlement Agreement attached.
- (2) Dismiss the Comments filed by Anderson on July 16, 2001, in the Eminence, Missouri Rulemaking.
- (3) Resolve the proceeding in Docket No. 01-151 (the Eminence Rulemaking) by allocating Channel 249C2 to Potosi, Missouri, in lieu of current Channel 249C3 and make the other channel substitutions as proposed in Four Him's Counterproposal filed September 4, 2001, to accommodate substitution of 249C2 for 249C3 in Potosi, MO.

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 List A B C D E

Ozark Broadcasting, Inc. ("Ozark") initiated a rulemaking¹ on May 22, 2001, proposing the allocation of Channel 276C3 to Eminence, MO, which conflicts with the proposed substitution of Channel 276A for 248A in Rolla, MO, requested by Four Him in its earlier rulemaking.² In response to the NOPR issued in the Eminence, MO, Rulemaking, Anderson filed Comments on June 16, 2001 in support of allocating 267C3 [sic] at Eminence, MO. Four Him filed a Counterproposal on September 4, 2001 ("Counterproposal") requesting the same upgrade for KHZR and channel substitutions as proposed in its earlier rulemaking. Four Him requested the substitution of Channel 249C2 in lieu of Channel 249C3 in Potosi, MO, and modification of the KHZR license to reflect operation on the upgraded channel. In order to accommodate the upgrade, certain channel substitutions were necessary. Specifically, Four Him proposes to eliminate short spacing to KDAA, Rolla, MO, which currently operates on Channel 248A, by substitution of Channel 276A for 248A in Rolla. The substitution in Rolla in turn causes two short spacings to two other facilities: an allotment on Channel 276A in Linn, MO, and Ozark's KJEL on 279C in Lebanon, MO. The short spacing to Channel 276A in Linn can be eliminated by substitution of Channel 248A for Channel 276A. The short spacing to KJEL is eliminated by the reclassification of KJEL as a C0 facility operating on Channel 279C0 instead of its current licensed operation on Channel 279C. In its Counterproposal, Four Him also requested that Channel 281A be allocated to Eminence, MO. Specifically, Four Him requests the following change in the Table of Allocations:

¹ See, *NOPR (Eminence, Missouri)* MM Docket No. 01-151; RM-10167 (July 13, 2001).

² *Reclassification of License of FM station KJEL (Lebanon, MO)* DA 05-1715, AM-10567.

	<u>Present</u>	<u>Proposed</u>
Potosi, Missouri	249C3	249C2
Rolla, Missouri	248A	276A
Linn, Missouri	276A	248A
Lebanon, Missouri	279C	279C0
Eminence, Missouri	--	281A ³

Anderson has agreed to dismiss her Comments in exchange for payment of \$11,000. This Joint Petition is being filed within the time limits set forth in the Commission's Public Notice Window Announced For Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments, DA 05-1688, released June 20, 2005. In this proceeding, the Commission waived settlement reimbursement caps until October 3, 2005 in settlement of certain rulemaking proceedings.

Therefore, it is respectfully requested that Anderson's Comments be dismissed and that Four Him's Counterproposal be granted, including *inter alia* of the substitution of Channel 249C2 for 249C3 in Potosi, MO.

Grant of this Petition for Reconsideration is in the public interest by completely resolving two Rulemakings (RM-10567 and RM-10167) thereby conserving Commission and party resources.⁴

³ Site restricted see Engineering Exhibit 2 attached to Four Him's Counterproposal. In the event the Commission chooses not to add 281A to Eminence, Four Him requests that the Rulemaking proceed nonetheless by allocation of 249C2 in lieu of 249C3 to Potosi. Four Him reiterates its intent to apply for, construct, and operate on channel 249C2 if allocated, and will apply for and construct channel 281A if the channel is allocated to Eminence and Four Him's application is granted.

⁴ Agreement has been reached with all the parties involved. Four Him filed a Petition for Reconsideration, as well as a Joint Petition for Approval of Agreement and For Other Relief, on July 25, 2005. Those pleadings include an Agreement with Ozark Broadcasting, Inc., whereby

FOUR HIM ENTERPRISES, L.L.C.

By: 

A. Wray Fitch III
Timothy R. Obitts
Its Attorneys

Gammon & Grange, P.C.
8280 Greensboro Drive
7th Floor
McLean, VA 22102
703-761-5000

JERALDINE ANDERSON

By: 

Gene A. Bechtel
Her Attorney

Law Office of Gene Bechtel, P.C.
1050 17th Street, NW
Suite 600
Washington, D.C. 20036

October 3, 2005

Ozark agrees to a downgrade of its station KJEL, Lebanon, MO, from Channel 279C to 279C0 and to the channel substitutions proposed in the Four Him Counterproposal. Also filed concurrently today, is another Joint Petition for Approval of Agreement and For Other Relief between Four Him and KDAA-KMOZ, LLC, the licensee of KDAA(FM), Rolla, MO, wherein Rolla agrees to the channel substitutions proposed by Four Him in its Counterproposal and to dismiss certain adverse pleadings. As such, agreement has been reached by all parties involved in both the Lebanon, MO, and Eminence, MO, rulemakings.

CERTIFICATE OF SERVICE

I, Stephanie Patton, do hereby certify that a copy of the foregoing **JOINT PETITION FOR APPROVAL OF AGREEMENT AND FOR OTHER RELIEF** was mailed by First Class U.S. Mail, postage prepaid (or hand delivery, as marked with an asterisk), this 3rd day of October, 2005, to the following:

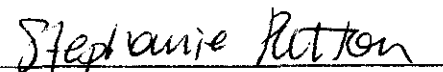
Gene A. Bechtel
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Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, D.C. 20016


Stephanie Patton

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into effective as of the ___ day of September, 2005, by and among Jeraldine Anderson ("Anderson") and Four Him Enterprises, L.L.C. ("Four Him"), licensee of KHZR(FM), Potosi, MO.

WITNESSETH:

WHEREAS, Four Him and Ozark Broadcasting, Inc. ("Ozark") have pending before the Federal Communications Commission ("FCC") a Joint Petition for Approval of Agreement and Other Relief, under the terms of which Four Him would pay Ozark for downgrading Station KJEL, Lebanon, MO, to Class C0 in order to allot Channel 249C2 at Potosi, MO and upgrade Station KHZR (the "KHZR Upgrade").

WHEREAS, Anderson filed in response to the Notice of Proposed Rule Making MM Docket No. 01-151; RM-1067, Comments with an expression of interest in the proposed Channel 267C3 at Eminence, Missouri, if allotted, on July 13, 2001 ("Comments"), and Anderson is now willing to withdraw her Comments and support the KHZR Upgrade;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Dismissal of Adverse Pleadings**. Concurrently herewith, Anderson and Four Him shall file with the FCC jointly a Joint Request for Approval and for Other Relief ("Joint Request") of the withdrawal of Anderson Comments ("Adverse Pleadings"). Anderson shall in good faith pursue approval by the FCC of the withdrawal or dismissal of the Adverse Pleadings and shall take whatever additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, the withdrawal or dismissal of the Adverse Pleadings and the approval of the KHZR Upgrade.
2. **Affidavits**. Pursuant to Section 73.3525(a) of the Rules, by signing this agreement, Anderson and Four Him declare, under penalty of perjury, that this agreement is in the public interest because it will result in improved service to the residents of Potosi, MO.
3. **Consideration for Withdrawal/Dismissal**. As consideration for the withdrawal/dismissal of the Adverse Pleadings, Four Him shall pay to Anderson the sum of Eleven Thousand Dollars (\$11,000.00) (the "Settlement Payment"). Said payment also represents a portion of the legitimate and prudent expenses incurred and to be incurred by Anderson in connection with her Comments and the dismissal/withdrawal of the same. The Settlement Payment shall be paid by Four Him to Anderson in readily available funds within five (5) business days following the date upon which the order (or orders) of the FCC allotting Channel 249C2 to Postosi, MO, shall have become a Final Order. Under this Agreement, "Final Order" shall mean action by the FCC (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended; (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending;

and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the rules and regulations of the FCC has expired. In the event this Settlement Agreement or the KHZR Upgrade is denied, this Agreement shall terminate.

4. **Authorization and Binding Obligation.** The parties represent to one another that they each have the power and authority to enter into and carry out this Settlement Agreement and that this Settlement Agreement constitutes the valid and binding obligation of each of them in accordance with its terms.

5. **Notices.** Any notice, consent, waiver or other communication hereunder shall be sent by nationally recognized overnight air courier service, so that delivery is made the next business day to all parties and counsel at the addresses specified below (or at such other address which party shall specify to the other party in accordance herewith):

If to Anderson:

Jeraldine Anderson
1702 Cypress Drive
Irving, Texas 75061

with a copy to:

Gene Bechtel, Esq.
Law office of Gene Bechtel, P.C.
1050 17th Street, NW
Washington, DC 20036

If to Four Him:

Four Him Enterprises, L.L.C.
4600 Executive Centre Parkway
Suite A
St. Peters, MO. 63376

With a Copy to:

A. Wray Fitch, III, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

6. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties. There are no other agreements, representations, warranties or understandings (oral or written) between them with respect to the subject matter hereof, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be altered, amended or modified except by a written instrument signed by all parties.

7. **Enforcement.** In the event that either party refuses to cooperate in seeking to effectuate this Settlement Agreement, the other party shall have available all remedies to which they are entitled under law or at equity, and the rules, regulations and policies of the Federal Communications Commission, including any and all rights to the remedy of specific performance. Notwithstanding other rights reserved to the parties pursuant to this Settlement Agreement, the parties agree that the failure of either party to perform its obligations and covenants under this Settlement Agreement is one for which there is no adequate remedy at law, and either party may seek injunctive relief and/or specific performance requiring the other party to perform its obligations hereunder. Should the parties engage in litigation arising out of this Settlement Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

8. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their heirs, successors, executors, legal representatives and assigns, provided however that no party may voluntarily assign this Settlement Agreement without the express written consent of the other parties, such consent not to be unreasonably withheld.

9. **Construction.** The event that any of the provisions contained in this Settlement Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein. Further, this Settlement Agreement is the product of negotiation and preparation by and between the parties, and their respective attorneys. Accordingly, the parties acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another (or the attorneys for one party or another) and shall be construed accordingly.

10. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri (without application of conflicts of laws principles), the Communications Act of 1934 (as amended) and the Rules and Regulations of the Federal Communications Commission. The parties agree to accept the jurisdiction of the courts of the State of Missouri for the resolution of any disputes under this Agreement.

12. **Counterparts.** This Settlement Agreement may be signed by the parties in any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument, and each executed copy shall be an original for all purposes without accounting for the other copies. Copied and/or faxed signature pages may be deemed originals

for the purposes of this Settlement Agreement (i.e., with the underlying original signature page to be supplied to the FCC upon request). This Settlement Agreement shall be effective as of the date on which the executed counterparts are exchanged by the parties.

[NEXT PAGE IS THE SIGNATURE PAGE ONLY]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above. Where applicable, this agreement is executed under penalty of perjury.

JERALDINE ANDERSON

By: 

FOUR HIM ENTERPRISES, L.L.C.

By: _____

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above. Where applicable, this agreement is executed under penalty of perjury.

JERALDINE ANDERSON

By: _____

FOUR HIM ENTERPRISES, L.L.C.

By: Matthew Brown